

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

PARMA COMMUNITY GENERAL
HOSPITAL

Plaintiff

vs.

PREMIER ANESTHESIA OF PARMA,
A DIVISION OF PREMIER ANESTHESIA,
LLC, et al.

Defendants

and

LOCUMTENENS.COM LLC
2655 Northwinds Parkway
Alpharetta, GA 30009-2280

New Party Defendant

) CASE NO. 1:09-cv-325
)
)
)

) JUDGE DONALD C. NUGENT
)
)
)

) **FIRST AMENDED COMPLAINT**
)
)
)

) **JURY DEMAND ENDORSED HEREON**
)
)
)

1. This is an action for damages in excess of \$75,000.00, exclusive of interest costs and attorney's fees.
2. The Parma Community General Hospital Association owns and operates a hospital not for profit organized under Chapter 1702 of the Ohio Revised Code operating in a service area, the central city of which is Parma, Ohio.
3. Defendants Premier Anesthesia LLC and LocumTenens.Com LLC are citizens of Georgia and corporations which have common ownership, each operating with others under the umbrella of "Jackson Healthcare Companies."
4. On April 5, 2005 Plaintiff Parma Community General Hospital and Defendant Premier

Anesthesia LLC entered into a contract which generally provided for Defendant Premier to be the exclusive provider of anesthesia services at Plaintiff's hospital. It further provided that Premier manage department costs including the hiring of full-time employees to provide said services.

5. The contract term was initially based on two years and was extended through December of 2007.
6. In December 2007, the parties negotiated a process by which final billings and accounts receivable were to be reconciled and final payments and credits would be resolved by March 2008.
7. The Plaintiff Parma has provided Defendant Premier Anesthesia with a final reconciled billing of \$339,326.96.
8. Defendant Premier relied on an agreement with Parma at the end of the contract as being dispositive of certain costs being classified as "collections," or income other than expenses which, under the contract, would ultimately be balanced against cost reconciliation.
9. Defendant Premier in addition, in an attempt to alter the balances of reconciled costs at the end of the contract, provided claims for expenses over the two-year course of the contract period for providing to Parma through its subsidiary certain *locum tenens* providers or part-time employees at a cost in excess of \$560,000.00 over the course of the contract.
10. The cost of staffing part-time providers at two to three times market rates that was charged by Premier's subsidiary LocumTenens.Com LLC and passed on to Parma only at the end of the contract. This change involves services Parma cannot verify from its own

records and markedly alters the balance of any reconciliation of the contract between the parties.

11. The cost of staffing part-time providers is the type of cost Premier was charged with avoiding under its management contract, and should be absorbed internally by Premier.

COUNT I

BREACH OF CONTRACT

12. Plaintiff realleges and incorporates the allegations contained in Paragraphs 1 through 11 of this First Amended Complaint as if fully rewritten herein.
13. Premier's failure to efficiently manage the department of anesthesia at Parma in that they have engaged in excessive costs is a material breach of the contract between the parties, which was not revealed to Parma until the final reconciliation.
14. These actions have denied to Parma the purpose of the contract and Parma is entitled to recover these financial losses approximately caused by Premier's breaches including pre-judgment interest.

COUNT II

UNJUST ENRICHMENT

15. Plaintiff realleges and incorporates the allegations contained in Paragraphs 1 through 14 of this First Amended Complaint as if fully rewritten herein.
16. Defendants Premier and LocumTenens.Com LLC have profited from the mismanagement of the anesthesia department at Parma and by Premier's providing of anesthesia services at Parma through its subsidiary LocumTenens.Com LLC at two to three times market rates, Premier and LocumTenens.Com LLC have engaged in self-dealing, which conferred benefits upon them to the detriment of Parma.

17. Premier and LocumTenens.Com LLC have been unjustly enriched at Parma's expense and Parma is entitled to damages under the theories of unjust enrichment and *quantum meruit* for the fair value of those benefits conferred upon Premier and LocumTenens.Com LLC in the amount of \$556,579.00

COUNT III

FRAUD

18. Plaintiff realleges and incorporates the allegations contained in Paragraphs 1 through 17 of this First Amended Complaint as if fully rewritten herein.
19. Under the contract Premier, through its employees and agents, fraudulently represented to Parma that it was able to provide properly credentialed anesthesiology staffing in sufficient numbers for the department to meet the needs of the hospital at its own cost and it was capable of operating the department efficiently.
20. Premier misrepresented or failed to inform Parma that it would obtain required staffing from its affiliate, LocumTenens.Com LLC, at two to three times competitive rates, intending to pass on all sorts of costs related to staffing to the benefit of its affiliate and to the benefit of Premier, without the knowledge of Parma.
21. Premier, from the very outset, had every intention of passing these unreasonable costs on to Parma without representing properly to Parma that Premier and its own affiliate would benefit from these costs.
22. As a direct and proximate result of the foregoing fraud by Premier and LocumTenens.Com LLC and Parma is entitled to a rescission of the contract and such further relief as is appropriate from Premier's and LocumTenens.Com LLC's fraudulent acts.

WHEREFORE, Plaintiff Parma Community General Hospital prays for judgment for the original reconciled amount of \$339,326.96 plus the value of the *locum tenens* expense claimed by Defendants fraudulently in the amount of \$556,579.00, for a total of \$895,905.96, for rescission of the contract and a new accounting, plus interest, attorney's fees and any other relief this Court deems appropriate.

Respectfully submitted,

/s/ Michael P. Cassidy
MICHAEL P. CASSIDY (#0001087)
Attorney for Plaintiff
Cassidy & Associates
11221 Pearl Road
Strongsville, OH 44136-3344
(440) 728-7000
(440) 846-9770 – Facsimile
email: mike.cassidy@cassidylawfirm.com

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

/s/ Michael P. Cassidy
MICHAEL P. CASSIDY (#0001087)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing *First Amended Complaint* was filed electronically on the 24th day of March, 2009 in accordance with the court's electronic filing guidelines. Notice of this filing will be sent to all parties by operation of the court's electronic filing system. Parties may access this filing through the court's filing system.

Service upon New Party Defendant LocumTenens.Com LLC shall be made by certified mail by the Clerk of Court.

/s/ Michael P. Cassidy

MICHAEL P. CASSIDY (#0001087)